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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/734,843

12/12/2003

Russell Evan Thorson

19,519

1966

23556

7590

08/15/2006

KIMBERLY-CLARK WORLDWIDE, INC.
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EXAMINER

MAYES, MELVIN C

ART UNIT

PAPER NUMBER

1734

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/734,843

Applicant(s)

THORSON ET AL.

Examiner

Melvin Curtis Mayes

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1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 10 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/30/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

(1)

Claims 10 and 16 are objected to because of the following informalities: in step e), it is suggested that the claims read “said distal end” to refer to the previously claimed distal end of the panel. Appropriate correction is required.

Claim Rejections - 35 USC § 112

(2)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

(3)

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 10 and 16 claim providing front and back panels having distal end and first and second side edges and attaching an elastic band having side edges to the front or back panel, securing absorbent assembly to front and back panels, folding a panel over the other panel and bonding first and second side edges of panels. However, the specification describes providing first and second webs from which front and back panels having first and second side edges are formed once one web is folded over the other and the web bonded and cut to form panels having first and second side edges, an elastic band attached to one of the first or second webs and

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absorbent assemblies secured to the first and second webs. It is not clear whether Applicant intends the method as claimed to be limited to making a single absorbent article using panels having side edges and an elastic band having side edges or to a making plurality of articles using first and second webs and a continuous elastic band, since the webs do not have first and second side edges but only the panels and elastic band formed after bonding and cutting have side edges. If the claims are maintained as written, it is suggested that the claim language be included in the specification, the claims limited to attaching an elastic band to one of the front and back panels such that the outer end of the elastic band is aligned approximately even the distal end of the panel without an elastic band.

Claims 10 and 16 claim a step of attaching an elastic band to the front or back panel and Applicant argues that in the claims only one elastic band is present which is attached to one of the front or back panels, however this is not clear as claimed. The claims do not appear to be limited to one elastic band.

Claim 20 claims “**each of** said back panel is stretched” but there is only a single back panel claimed in Claim 16.

Double Patenting

(4)

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re*

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Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

(5)

Claims 1, 6-8, 10, 16 and 19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,018,369 in view of EP 1 240 881.

U.S. Patent No. 7,018,369 claims a disposable pant-like undergarment comprising:

a stretchable front panel having a distal end, first and second side edge and a retracted length measured between said first and second side edges;

a stretchable back panel having a distal end, first and second side edge and a retracted length measured between said first and second side edges;

an elastic band secured to only one of said front and back panels and having a first end and first and second side edges, said elastic band being cantilevered outward from said distal end such that said first end overlaps portion of said respective front or back panel, and said elastic band having a retracted length less than said retracted length of said panel to which it is secured;

an absorbent assembly including a liquid pervious bodyside liner, a liquid-impervious outer cover and an absorbent positioned therebetween, said absorbent assembly being secured to said front and back panels; and

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a pair of seams joining said front panel, back panel and elastic band together at said first and second side edges to form a pant-like undergarment having a waist opening and a pair of leg openings.

EP 1 240 881 teaches that pants-type diaper is made by providing first and second web halves from which front and back panels of the diaper are to be formed, placing and bonding an absorbent pad between the webs having, folding, bonding the web halves and cutting to form the diaper.

It would have been obvious to one of ordinary skill in the art to have made the disposable pant-like undergarment of U.S. Patent No. 7,018,369 by providing the front and back panels as a part of first and second web halves, securing the elastic band and absorbent assembly to the web halves and bonding and cutting, as taught by EP '811, for forming a pants-type diaper having front and back panels and an absorbent assembly secured to the panels. Securing the elastic band to either the front or back panel before, after or at the same time as securing the absorbent assembly would have been obvious to one of ordinary skill in the art.

(6)

Claims 1, 6-8, 10, 16 and 19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 15 of U.S. Patent No. 6,979,380 in view of EP 1 240 881 and WO 96/08224.

U.S. Patent No. 6,979,380 claims a method of manufacturing a disposable undergarment comprising: cutting a web of body panel material along a longitudinal machine direction forming a rear body panel web and a front body panel web each outer lateral edges; connecting a crotch member to each of said rear and front body panels thereby bridging the gap therebetween and

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applying elastic elements in the longitudinal direction to at least one of said front body panel web and rear body panel web adjacent the outer lateral edge thereof. US Patent No. 6,979,380 does not claim applying the elastic element as an elastic band so as to be cantilevered outward from the outer lateral edge of either the front or rear (back) body panel web, providing the crotch member as an absorbent assembly including a liquid pervious bodyside liner, a liquid-impervious outer cover and an absorbent positioned therebetween, and folding one web over the other and bonding to form undergarments.

EP 1 240 881 teaches that pants-type diaper is made by providing first and second web halves from which front and back panels of the diaper are to be formed, placing and bonding an absorbent pad between the webs having, folding, bonding the web halves and cutting to form the diaper. The absorbent pad comprises a liquid pervious topsheet (bodyside liner), a liquid-impervious backsheet (outer cover) and liquid-absorbent core disposed therebetween.

WO 96/08224 teaches that in providing a disposable absorbent garment with an elastic waistband, elastic waistband member may be provided to the edge such that a portion of the waistband extends beyond the peripheral edge of the waistborder (Fig. 5B).

It would have been obvious to one of ordinary skill in the art to have modified the method of U.S. Patent No. 6,979,380 for manufacturing a disposable undergarment by providing the crotch member as an absorbent pad comprising a liquid pervious topsheet (bodyside liner), a liquid-impervious backsheet (outer cover) and liquid-absorbent core disposed therebetween, folding one web over the other, bonding the webs and cutting to form an undergarment having seams, as taught by EP '881, for forming a pants-type diaper from first and second webs. Applying the elastic element to either the front or rear (back) body panel web in the form of an

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elastic band which extends outward from the edge of the web would have been obvious to one of ordinary skill in the art, as WO 96/08224 teaches that a disposable absorbent garment can be provided with an elastic waistband by providing an elastic waistband member to the edge such that a portion of the waistband extends beyond the peripheral edge.

Securing the elastic band to either the front or back panel web before, after or at the same time as securing the absorbent assemblies would have been obvious to one of ordinary skill in the art.

Claim Rejections - 35 USC § 103

(7)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(8)

Claims 1, 6-8, 10, 11, 16 and 19 are rejected under 35 U.S.C. 103(a) as being obvious over Thorson et al. 6,979,380 in view of EP 1 240 881 and WO 96/08224.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference

under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Thorson et al. disclose a method of making a disposable undergarment comprising: cutting a web of body panel material along a longitudinal machine direction forming a rear body panel web and a front body panel web each outer lateral edges; connecting a crotch member to each of said rear and front body panels thereby bridging the gap therebetween; applying an elastic waist band to one or both of the front body panel webs adjacent the outer lateral edge thereof; folding such that the webs are overlapping with outer edges aligned; bonding to form side seams; and cutting to form undergarments. Thorson et al. do not disclose applying the elastic waist band so as to be cantilevered outward from the outer lateral edge of either the front or rear (back) body panel web or providing the crotch member as an absorbent assembly including a liquid pervious bodyside liner, a liquid-impervious outer cover and an absorbent positioned therebetween.

EP 1 240 881 teaches that pants-type diaper made by providing first and second web halves from which front and back panels of the diaper are to be formed, placing and bonding an absorbent pad between the webs having, folding, bonding the web halves and cutting to form the diaper are provided with absorbent pad comprising a liquid pervious topsheet (bodyside liner), a liquid-impervious backsheet (outer cover) and liquid-absorbent core disposed therebetween.

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WO 96/08224 teaches that in providing a disposable absorbent garment with an elastic waistband, elastic waistband member of width of 1-8 cm may be provided to the edge such that a portion of the waistband extends beyond the peripheral edge of the waistborder (Fig. 5B).

It would have been obvious to one of ordinary skill in the art to have modified the method of Thorson et al. for manufacturing a disposable undergarment by providing the crotch member as an absorbent pad comprising a liquid pervious topsheet (bodyside liner), a liquid-impervious backsheet (outer cover) and liquid-absorbent core disposed therebetween, as taught by EP '881, for forming a pants-type diaper from first and second webs and a separate absorbent crotch. Applying the elastic waist band of width of 1-8 cm to either the front or rear (back) body panel web as extending outwardly from the edge of the web would have been obvious to one of ordinary skill in the art, as WO 96/08224 teaches that a disposable absorbent garment can be provided with an elastic waistband by providing an elastic waistband member to the edge such that a portion of the waistband extends beyond the peripheral edge.

Securing the elastic band to either the front or back panel web before, after or at the same time as securing the absorbent assemblies would have been obvious to one of ordinary skill in the art.

(9)

Claims 10-13, 16, 17 and 19 rejected under 35 U.S.C. 103(a) as being obvious over EP 1 240 881 in view of WO 96/08224.

EP 1 240 881 discloses a method of making a pants-type diaper comprising: providing first and second elastic web halves from which front and back panels of the diaper are to be formed; placing and bonding an absorbent pad between the webs having; folding one web over

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the other; bonding the web halves; and cutting to form the diaper. The absorbent pad comprises a liquid pervious topsheet (bodyside liner), a liquid-impervious backsheet (outer cover) and liquid-absorbent core disposed therebetween (col. 1-9). EP '881 does not disclose providing the elastic web halves with elastic bands cantilevered outward from the edges of the web halves.

WO 96/08224 teaches that a disposable absorbent garment with improved containment, comfort and aesthetics is formed by providing the garment with an elastic waistband. The elastic waistband is formed by providing front and back waistband members of width of 1-8 cm to form a continuous waistband, and the waistband members may be provided to the edges such that a portion of the waistband extends beyond the peripheral edges of the waistborder of sheets forming the garment (pgs. 1-15, Fig. 5B).

It would have been obvious to one of ordinary skill in the art to have modified the method of EP '881 for making a pants-type diaper by applying elastic waistband members of width of 1-8 cm to the first and second web halves, as taught by WO '224, to form a disposable absorbent garment with improved containment, comfort and aesthetics by providing a continuous elastic waistband. Applying the elastic waistband members to the web halves so as to extend outwardly from the edge of the web halves (cantilevered outwardly) would have been obvious to one of ordinary skill in the art, as WO 96/08224 teaches that a disposable absorbent garment can be provided with an elastic waistband by providing an elastic waistband member to the edges such that a portion of the waistband extends beyond the peripheral edges of the sheets forming the garment. By providing each web halve with an elastic waistband member of width of 1 cm and such that a portion of each member extends outwardly and folding and cutting to form a diaper having front and back panels each having a waistband member, the end of an elastic band

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on one panel is obviously aligned approximately even with the edge (distal end) of the other panel, as claimed, as the distance between the end of an elastic band and the edge of other panel is less than 1 cm.

Securing the elastic band to the web halves before, after or at the same time as securing the absorbent pad would have been obvious to one of ordinary skill in the art.

Conclusion

(10)

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


(11)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Curtis Mayes whose telephone number is 571-272-1234. The examiner can normally be reached on Mon-Fri 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Melvin Curtis Mayes
Primary Examiner
Art Unit 1734

MCM
August 10, 2006